

**WEEKLY HIGHLIGHTS AT-A-GLANCE****FEDERAL – Regulatory**

- **BLM Lease Sales – Dakotas, Montana, Wyoming.** On March 8, the eco-activist group, Center for Biological Diversity, filed a formal administrative protest against a Bureau of Land Management (BLM) plan to auction more than 1,000 acres of federal oil and gas lands in Montana and the Dakotas in May. This follows another protest filed by the Center the prior week targeting a plan to auction 27,000 acres of oil and gas lands in Wyoming, also scheduled for May. [Read more.](#)
- **BLM Lease Sale – Nevada.** (Update to 3/7/16 Weekly Report) On March 8, dozens of environmental activists protested in downtown Reno against the sale of oil and gas leases on federal land. The area protests were staged in conjunction with the BLM lease sale that day and did not disrupt that auction. However, BLM officials say that while 39 parcels totaling more than 50,000 acres in Elko and Eureka were on the block, none received the minimum bid of \$2 per acre, apparently because of current low oil prices. [Read more.](#)
- **Methane Emissions.** The U.S. Environmental Protection Agency (EPA) said last Thursday it will develop regulations to expand its clamp down on methane emissions from oil and natural gas drilling to all existing wells as part of a joint strategy unveiled by President Barack Obama and Canadian Prime Minister Justin Trudeau to tackle climate change and reduce greenhouse gas emissions from the energy sector. “We will begin with a formal process to require companies operating existing oil and gas sources to provide information to assist in the development of comprehensive regulations to reduce methane emissions,” said EPA Administrator, Gina McCarthy. [Read more.](#)

**FEDERAL – Judicial**

- **Public Lands; Leasing – Montana.** (Update to 1/25/16 Weekly Report) The federal government has fired back at Solenex LLC’s opposition to its proposal to cancel a suspended oil and gas lease on land sacred to Montana’s Blackfeet Nation, telling a D.C. district court on March 4 that it is fully entitled to change its mind. Responding to legal arguments in [Solenex LLC v. Jewell et al](#) (Case No. 1:13-cv-00993) in the U.S. District Court for the District of Columbia, government lawyers wrote in a filing that the company’s arguments were based on “incorrect legal interpretations, misrepresented facts, and factual assumptions for which Plaintiff has no evidence.” [Read more.](#)

- **Gathering Agreements; Covenants – Texas.** As part of the Sabine Oil & Gas Corp. bankruptcy case, *In re: Sabine Oil & Gas Corp., et al.* (Case No. 15-11835), a federal judge ruled on March 8 that under Texas law, the gas gathering agreements at issue do not constitute or contain covenants running with the land. As a result, Sabine will be permitted to reject the contracts and the counterparties would be treated as unsecured creditors. [Read more.](#)

## **STATE – Regulatory**

- **Permitting – Michigan.** (Update to 2/22/16 Weekly Report) The state’s environmental agency has granted a permit to drill an exploratory oil well on church property in suburban Detroit. The Michigan Department of Environmental Quality is allowing Traverse City-based Jordan Development to drill at Word of Faith International Christian Center in Southfield, despite city leaders actively opposing drilling on the site. The agency decision came after a February 17 meeting in Southfield that attracted about 1,000 supporters and opponents. [Read more.](#)

## **STATE – Legislative**

- **Test Well Permitting – Kentucky.** SB 188, reported favorably out of the Senate on March 4 and received in the House for consideration, adds a definition for “stratigraphic test well” and establishes permitting rules and requires that persons applying for a permit for a stratigraphic test well be granted a 3-year confidentiality period for drilling and well records. [Read more.](#)
- **Drilling Permits – Louisiana.** On March 4, HB 632 was pre-filed by Rep. Jim Morris (R) and provisionally referred to the Committee on Natural Resources and Environment. The bill provides for specified amounts of financial security required by applicants for drilling permits, and allows exemptions for certain operators in good standing. (See more below under State-by-State Legislative Session Overview) [Read more.](#)
- **Mineral Rights – Louisiana.** On March 4, HB 634 was pre-filed by Rep. Tanner Magee (R) and provisionally referred to the Committee on Civil Law and Procedure. The bill amends existing law to include lands appropriated by an acquiring authority, such as a government or agency, to allow for prescription of nonuse and the intent to reserve or exclude mineral rights from such lands. [Read more.](#)
- **Employee Misclassification – Louisiana.** On March 4, HB 665 was pre-filed by Rep. Patricia Smith (D) and provisionally referred to the Committee on Labor and Industrial Relations. The Democratic bill provides for an increase in the administrative penalties assessed for the misclassification of employees. Given the Republican control of both chambers of the legislature, and the brief legislative session which ends on June 16, committee and bill passage is highly unlikely. [Read more.](#)

- **Spacing; Pooling – Pennsylvania.** On March 4, SB 1145 was introduced by Sen. Gene Yaw (R) and referred to the Environmental Resources and Energy Committee. The bill would exclude from the state Oil and Conservation Law any wells that unintentionally penetrate the Onondaga horizon and do not intentionally produce oil or gas from the Onondaga horizon, as it relates to spacing and pooling under current law. [Read more.](#)
- **Privilege Taxes – West Virginia.** On March 2, the West Virginia Senate passed a bill that would sharply reduce the state’s tax rates on oil and natural gas production as part of a measure that targeted reductions in severance taxes on coal production. The Republican-sponsored bill, SB 705, passed the Senate chamber by a vote of 19-15 along party lines. Just one Democratic senator broke ranks and voted with Republicans, who billed the legislation as necessary given the prolonged downturn in oil and natural gas markets. [Read more.](#)

## **STATE – Judicial**

- **Permitting – Colorado.** On March 9, the Greeley City Council overturned a decision made earlier this year by Greeley’s planning commission to deny an oil and gas operator a permit to drill 22 wells near neighborhoods. The Council’s decision maintained Greeley’s consistent record of green-lighting oil and gas proposals that come before the city situated in the mineral-rich Denver-Julesburg Basin. “We have to protect the private property rights of many citizens of Greeley who have mineral rights and have the right to access them,” said Mayor Tom Norton in support of the permit approval. [Read more.](#)
- **Royalty Payments – Texas.** A number of law firms have joined forces and filed multiple petitions in the District Courts of McMullen County, Dimmit County, and La Salle County, Texas against Chesapeake Exploration LLC and others for breach of contract. The legal consortium alleges that the defendants have materially breached contractual obligations resulting in underpaid royalties under lease agreements for wells on approximately 30,000 acres in the Eagle Ford. [Read more.](#)
- **Production Payments – Texas.** On February 26, the Texas Supreme Court ruled that production payments, like overriding royalty payments, cannot survive the termination of their respective oil and gas leases. In [Apache Deepwater, LLC v. McDaniel Partners, Ltd.](#) (Case No. 14-0546), the Supreme Court disagreed with the El Paso Court of Appeals and handed down an opinion consistent with other prevailing oil and gas authorities. In reversing the appellate court decision, the Court said that “[a]bsent express language in the assignment to the contrary, we apply the general rule that when an oil and gas lease terminates, the overriding royalty [or similar production payment] created in an assignment of the lease is likewise extinguished.” [Read more.](#)

## **INDUSTRY NEWS FLASH:**

◆ **According to the American Petroleum Institute, more than half of oil and gas jobs will be held by women and minorities by 2035.** A new report, commissioned by the American Petroleum Institute, predicts that the oil, natural gas and petrochemical industries will add 1.9 million new jobs over the next 19 years. Of those, 707,000 – or 38 percent – will be held by African-American and Hispanic workers. And women will fill 290,000 of the energy industry’s new positions. [Read more.](#)

**PRACTICE TIPS: This week we provide readers with a primer on liens and their priority, including information on secured lender’s liens, mechanic and materialmen’s liens, joint operating agreement liens, and more from Haynes and Boone LLP.** The latest article from Haynes and Boone LLP sets forth the types of liens that can encumber the assets of an exploration and production companies, and the priority of such liens. [Read more.](#)

## **State-by-State Legislative Session Overview**

On March 7, the National Association of State Budget Offices released an overview of 40 State of the State addresses delivered by governors to their states’ legislatures, which can be found [here](#). Several major policy themes were carried over from previous years’ addresses, including calls for increased investment in education, infrastructure and health care. Other areas such as drug abuse, criminal justice reform, water management, and rural job creation initiatives received increased attention.

**Minnesota** convened its 2016 legislative session on March 8.

**Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia and Wisconsin** are in regular session. The **District of Columbia** and the **U.S. Congress** are also in regular session.

**Louisiana** is expected to convene its 2016 legislative session on March 14.

**Washington** convened a special session on March 10. **Louisiana** adjourned a special session on March 9.

The following states adjourned their 2016 legislative sessions on the dates provided: **Oregon** (March 3); **Wyoming** (March 4) and **Washington** and **Utah** (March 10).

The following states are expected to adjourn their 2016 legislative sessions on the dates provided: **Florida** (March 11) and **Virginia** and **West Virginia** (March 12).

**Wyoming** Republican Gov. Matt Mead has until March 19 to act on any legislation presented to him after March 1 or it becomes law without signature. **Utah** Republican Gov. Gary Herbert and **Washington** Democratic Gov. Jay Inslee have until April 2 to act on legislation or it becomes law without signature. **Oregon** Democratic Gov. Kate Brown has until April 14 to act on legislation or it becomes law without signature.

**New Mexico** Republican Gov. Susana Martinez had a signing deadline on March 9.

The following states are currently holding interim committee hearings: **Arkansas, Montana, Nevada** and **North Dakota**.

## Franchise Tax

**Louisiana** [HB 735](#) was pre-filed and referred to the House Ways and Means Committee on March 4. This bill would change the date corporate franchise taxes are due from the 15<sup>th</sup> day of the third month following the month the tax is due, to the 15<sup>th</sup> day of the fourth month following the month the tax is due. This bill is sponsored by Rep. Neil Abramson, D-New Orleans, chair of the House Ways and Means Committee.

**Tennessee** [HB 1480](#) was deferred to the March 16 agenda in the House Finance, Ways and Means Subcommittee. Often in Tennessee, bills are deferred multiple times in committee without prior notice. They could be rescheduled multiple times before being considered or could not be considered at all. The bill, which passed the House Government Operations Committee on March 1, would exempt certain taxpayers from all or part of their franchise and excise tax liability for their first and second tax years in existence if the taxpayers meet certain employment and gross receipts requirements. The bill would take effect on July 1, 2016 and would automatically expire on July 1, 2021. Companion bill [SB 2366](#), sponsored by Sen. Bo Watson, R-Hixson, is pending in the Senate Revenue Subcommittee of the Senate Finance, Ways and Means Committee.

## Landmen

### Employee Misclassification

**Louisiana** [HB 665](#) was pre-filed on March 4 and referred to the House Labor and Industrial Relations Committee. This bill would remove the warning and increase the fine for employers that misclassify their employees as independent contractors. In place of a written warning for a first offence, employers would have to pay a penalty up to \$5,000 per misclassified employee. The proposed fee for a second offence would be up to \$10,000 per misclassified employee, a third offence penalty would be up to \$25,000 per employee. The proposed penalties for subsequent offences would be a fine up to \$50,000 and imprisonment of not more than 90 days per misclassified employee. This bill is sponsored by Rep. Patricia Smith, D-Baton Rouge. Given the Republican control of both houses of the state legislature, and the brief legislative session ending June 16, prospects for committee reporting and floor consideration are unlikely.

## Lands

### Land Permits

**Louisiana** [HB 632](#) was pre-filed and referred to the House Natural Resources and Environment Committee on March 4. This bill relates to the financial security needed for oil and gas drilling activities. It says that an applicant would have to provide financial security for a permit to drill within 30 days of the completion date or from the date the operator is notified that the financial security is required. The financial security that is required is contingent on the type and depth of the well. This legislation would exempt an owner in good standing from the financial security requirements needed to drill new wells. An “operator in good standing” is defined as an operator who has no outstanding violations and has a record of compliance with applicable statutory requirements and the rules and regulations of the office of conservation for a period of 48 months immediately prior to the date an application for a permit to drill is filed or amended with the office.

This bill is sponsored by Rep. Jim Morris, R-Bossier, vice-chair of the House Ways and Means Committee.

## Oil and Gas

### General Oil and Gas

**Idaho** [SB 1339](#) passed the House on March 7. The bill would make changes to the administrative permitting process to drill or treat wells. According to the [statement of purpose](#), the bill would streamline and clarify the administrative permitting process for developers, state agencies, and mineral interest owners by bringing it in line with the process in other states. With regards to the permitting process, the bill states:

- If the application for a permit to drill an oil well is incomplete, it would require that the Department of Lands notify the applicant and highlight the materials needed to complete the application.
- Once the application is filed, the Department of Lands would have to notify the Department of Water Resource of the application to drill or treat a well. The Director of Water Resources then would have 10 business days to recommend conditions necessary to protect fresh water supplies.
- Applications for permits would have to be posted on the Department of Land’s website for 10 business days for written comment.
- The Department of Lands has 15 days to approve or reject the application to drill or treat a well.

The fiscal note states that the bill would have a positive impact on the general fund by allowing dozens of new wells and infrastructure over the next three years, which would account for an increase in payroll taxes and corporate income taxes. Similar legislation, [SB 1306](#), is pending in the Senate Resources and Environment Committee.

**Kentucky [SB 188](#)**, which passed the Senate last week, was received in the House on March 4 and referred to the House Natural Resources and Environment Committee on March 7. The bill passed the Senate Natural Resources and Energy Committee on February 24 with a [substitute amendment](#) making technical changes. The bill would require a permit for drilling a stratigraphic test well, which is defined as “an exploratory borehole drilled for the sole purpose of acquiring subsurface geological and structure test data.”

**Louisiana [HB 451](#)** was pre-filed on March 3 and referred to the House Natural Resources and Environment Committee. The bill would decrease the annual fees that the Department of Natural Resources’ Office of Conservation collects from the operators of oil and gas wells. The decrease in the cap would take place beginning in the fiscal year 2016-2017 and would be as follows:

- From \$3,675,000 to \$2,450,000 for capable oil and gas wells.
- From \$1 million to \$400,000 for class I wells.
- From \$2,187,500 to \$875,000 for class II, III, and storage wells type A and B facilities.

The bill would also repeal application fees that were charged on July 1, 2015 and would repeal the authorization to charge application fees moving forward. It would allow for the increase of fees to not exceed 8.5 percent of the fees that were charged on July 1, 2002.

This bill is sponsored by Rep. Jim Morris, R-Bossier, vice-chair of the House Ways and Means Committee.

**Louisiana [SB 165](#)** was pre-filed on March 3 and referred to the Senate Natural Resources Committee. This bill would require the Commissioner of Conservation to require that an oilfield operator notify the owner of the land if the permit to drill on that land is being transferred to a new operator. If the site is declared orphaned, the operator must also notify the landowner.

This bill is sponsored by Sen. R. L. “Bret” Allain, II, R-Franklin, vice-chair of the Senate Finance Committee.

**Oklahoma [HB 2651](#)** passed the House unanimously on March 7 and is awaiting committee referral in the Senate. The bill would create a policy that would reduce and recycle oil and gas waste whenever feasible, and to treat waste that cannot be recycled.

Oil and gas waste includes saltwater, mineral brines, waste oil and other substances produced or obtained during the drilling, development, producing and operation of wells.

**West Virginia [HB 4323](#)** passed the Senate Judiciary Committee as amended on March 9 and was read for a second time on the Senate floor on March 10. It is now pending third reading. This bill would require that all pipeline and well operators report incidents to the Division of Homeland Security and Emergency Management at the Mine and Industrial Accident Call Center. The bill would require that the incidents be reported within 15 minutes. The director could impose civil administrative penalties of between \$2,500 and \$50,000 if the operator fails to give a timely notice of the incident.

Similar legislation, [SB 445](#), was introduced and referred to the Senate Energy, Industry and Mining Committee on February 1. The Senate bill is sponsored by Senate President Bill Cole, R-Romney.

**West Virginia** [HCR 96](#) was adopted by the House on March 9 and sent to the Senate Rules Committee. Under state rules, concurrent resolutions must be passed and signed by both chambers, but do not require the governor's signature. This resolution aims to request that the Federal Regulatory Commission expedite the approval of six interstate natural gas pipeline projects in West Virginia. The resolution states the pipelines would maximize natural gas resources, create thousands of jobs, provide needed tax revenue to pay for government services and reduce America's dependence on foreign sources of energy. The resolution is sponsored by Del. Lynwood Ireland, R-Pullman.

**Wyoming** [SF 28/Chapter No. 85](#) was signed by Republican Gov. Matt Mead on March 7. Effective July 1, 2016, the new law will transfer the regulation of a geologic sequestration facility and site to the Department of Environmental Quality if an oil and gas operator converts to geologic sequestration after ending recovery operations or injects carbon dioxide for long-term storage. If the operator does not convert to geologic sequestration, the wells will have to be plugged and abandoned. The Wyoming Oil and Gas Commission supervisor will determine whether the operation is injecting carbon dioxide that would risk the drinking water supply. The operator can request a hearing before the commission within 15 days of receiving notice of the supervisor's findings.

## **Mineral Rights**

**Louisiana** [HB 634](#) was pre-filed on March 4 and referred to the House Civil Law and Procedure Committee. Current law provides that when land is acquired from any person by an acquiring authority through sale, exchange, donation, or other contract, condemnation or expropriation, and a mineral right is reserved, prescription of the mineral right is interrupted. This bill would add property appropriation to the list of ways in which an acquiring authority can gain property.

This bill is sponsored by Rep. Tanner Magee, R-Houma, a member of the House Civil Law and Procedure Committee.

## **Royalty Payments**

The **Pennsylvania** House Environmental Resources and Energy Committee is scheduled to hold an informational hearing on [HB 1391](#) on March 15. The bill is primarily sponsored by Rep. Garth Everett, R-Muncy, Rep. Matthew Baker, R-Wellsboro, Rep. Sandra Major, R-Montrose, and Rep. Tina Pickett, R-Towanda, and was introduced and referred to the House Environmental Resources and Energy Committee on June 29. The bill would require the minimum royalty payment to a lessor for unconventional gas well production to not be less than one-eighth of the lessor's percentage ownership in the production from the production, calculated on the total price received by the operator for the production in an arm's-length transaction. No deductions of any costs could result in a royalty payment less than the one-eighth requirement. This requirement



would apply to all leases for unconventional gas well production existing on or after the effective date of the bill. The bill would further provide for legal remedies and penalties, up to treble damages, for failure to pay the minimum royalty. If enacted, the bill would take effect 60 days after passage.

According to [stateimpact.npr.org](http://stateimpact.npr.org), Representative Everett did not want to push the bill during the state's budget stalemate, but continues to hear from people who feel they are not being paid fair royalty payments so has brought the bill up for discussion. Everett said he expects the committee to take action on the bill in the spring and has a good chance of passing the House.

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